

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Multimedia Cablevision, Inc.,

Complainant,

v.

Southwestern Bell Telephone
Company,

Respondent.

CS Docket No. 96-181
PA 95-008

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To: The Cable Service Bureau

OPPOSITION TO PETITION FOR CLARIFICATION

Southwestern Bell Telephone Company ("SWBT"), pursuant to Section 1.294(b) of the Commission's Rules, hereby files its Opposition to the October 3, 1996 Multimedia Cablevision ("Multimedia") Petition for Clarification ("Petition") of the Hearing Designation Order ("HDO") in the above-captioned proceeding.

1. Multimedia's Petition, in effect, asks the Commission to modify the following sentence of the HDO: "We also note that although the Commission generally only reviews pole attachment rates from the date a complaint is filed, nothing in this Order should be interpreted as our holding that SWB was entitled to retroactively bill for the period before October 27, 1994." HDO, n. 78.

2. Multimedia would have the Commission review conduit attachment rates for periods prior to the date that Multimedia filed its Complaint. Paragraph 37 and footnote 78 of

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the HDO clearly indicate that such pre-filing conduit attachment rates are beyond the scope of this proceeding.

3. The HDO clearly states that this proceeding is only intended to address conduit attachment rates since the filing date of the Complaint. The HDO states that it should not be interpreted as holding that SWBT was entitled to charge Multimedia for unauthorized attachments placed in violation of the License Agreement. Obviously, this does not mean that the HDO should be interpreted as forbidding charges for these unauthorized attachments, as Multimedia contends. Petition, ¶14. The HDO also provides the reason for not addressing liability for pre-filing conduit attachment rates: the Commission “only reviews pole attachment rates from the date a complaint is filed.” HDO, n. 78. Other provisions of the HDO likewise limit the scope of this proceeding to post-filing rates. For example, the HDO only requires that conduit attachment rates “be recomputed for the period since December 30, 1994.” HDO, ¶37. Similarly, the HDO only required the parties to file information relating to rates since the filing date of the Complaint. HDO, ¶38. Even the ordering clauses of the HDO only designate for hearing whether rates were excessive “during the period covered by the complaint.” HDO, ¶43(1)-(3).

4. Given that the HDO clearly does not contemplate that this proceeding would adjudicate conduit attachment rates for periods prior to the filing date of the Complaint, this portion of the HDO does not require clarification. In effect, instead of clarification, Multimedia is seeking reconsideration of this portion of the HDO. Section 1.106(a)(1) only allows petitions for reconsideration of an order designating a case for hearing if the matter relates to a petitioner’s

participation in the case. The portion of the HDO challenged by the Petition certainly does not have anything to do with participation of parties. Rather, the HDO's ruling determines that the matter to be resolved in this proceeding relates only to the rates for conduit attachments since the filing date of the Complaint.

5. The HDO is consistent with Section 1.1410(c), 47 C.F.R. §1.1410(c), and numerous pole attachment cases in which the Commission only reviewed pole attachment rates from the date the complaint was filed.¹ In these previous cases, even though the rate being charged before the filing date of the complaint exceeded the amount allowed by the Commission formula, the rulings did not require a refund for any prefiling rates. Instead, rates were only reviewed on a prospective basis from the filing date of the complaint.

For the reasons discussed above, the Commission should deny Multimedia's Petition.

¹ Telecable of Piedmont, Inc. v. Duke Power Co., 10 FCC Rcd 10898 ¶10 (1995); Heritage Cablevision Associates of Dallas v. Texas Utilities Elec. Co., 6 FCC Rcd 7099 ¶33 (1991); Storer Cable of Carolina, Inc. v. South Carolina Elec. & Gas Co., PA 85-0004, 1985 FCC LEXIS 3061 ¶17 (1985); Texas Cablevision Co. v. Southwestern Elec. Power Co., PA 84-0007, 1985 FCC LEXIS 3818 ¶19 (1985); Gulfstream Cablevision of Pinellas County v. Florida Power Corp., PA 84-0016, 1985 FCC LEXIS 4123 ¶8 (1984); Television Cable Service, Inc. v. Monongahela Power Co., 88 FCC 2d 63 ¶25 (1981); Cable Information Services, Inc. v. Appalachian Power Co., 81 FCC 2d 383 ¶28 (1980).

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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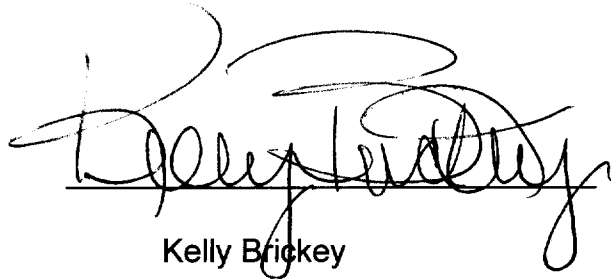
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October 15, 1996

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Opposition to Petition for Clarification, of Southwestern Bell Telephone", has been served October 15, 1996 to the Parties of Record.



Kelly Brickey

October 15, 1996

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